

Animals as subjects of dignity in the Brazilian Law

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Abstract— *It is easy to see how animals have been treated over the years by humans, like property, without rationality, objects. Most recently studies have showed that is not true, on contrary, the simpler way, they are able to have some sensibility, or, sensitive animals, and the last years, the law are bringing these concepts to their rules, including giving decisions in animals favor. Other countries' Constitutions, Brazilian own rules and decisions, are going along this news, and this will be the main purpose of this study, using the deductive method and bibliographical research, how the history of dignity has been changing over the years, considering animals as subjects; and about specific objectives, a few studies of dignity; how animals are saw by the law and finally, how come justice are changing its way to see them*

I. INTRODUCTION

For so many years, as long the human evolution, animals have been saw as way of production, food, property devoid feelings, pain and dignity. Corroborating this rule, it is possible to see how they are been used for all these years, always saw like objects by the law, philosophy and others subjects.

In philosophy studies, at the beginning, animals just are useful to comply with humans needs and at time of Schopenhauer lectures, for example, they achieved a status higher, as compassion objects.

Most recently, in the law, this scene has also been changing, with animals achieving another status, sentient being. United Nations Educational, Scientific and Cultural Organization (UNESCO), at 1978 approved the Universal Declaration of Animal Rights (DUDA); and in the national rights, Brazilian Constitution prescribed the article 225 which preserves the environment, 9.605/98 Law where mistreatment is punished, as the other decisions made by

the Justice that give rights to animals and also include them as part of family.

Using the deductive method and bibliographical research, this will be the main goal of the study, how the history of dignity has been changing over the years, considering animals as subjects; and about specific objectives, a few studies of dignity; how animals are saw by the law and finally, how come justice are changing its way to see them.

II. A LITTLE OF DIGNITY

For beginning, it's inevitable don't write of Brazilian Constitution which in its first article ever mention dignity: "Art. 1 The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations: [...] III - the dignity of the human person [...] (our translation)

Belchior (2021) mentions that human dignity promotion is a law provided at first article of Universal Declaration of Human Rights and at 5° article of American Convention of Human Rights, where it's watched human dignity ought to be assured because it's essential to anyone, including all the degrading treatment, hate discrimination referred to nationality, political option, ethical origin, sexual option and creed, for example.

In the history concept, dignity at ancient times was known at Rome, where just was considered worthy who had a prominent place in society. Pires and Pozzoli (2020) mention "the subject of absolute value it was not the community or class, but the personal human being, although existential and socially in community and the class" (p. 2)

The main characters of dignity at historical and philosophical scene are Zenon, Aristotle and Cicero.

Zenon has lived in ancient Greece at final of IV B.C century and his contribution to dignity was the development of human being moral unity to all. For him, as Zeus sons, the dignity means for having laws innate and equals, putting the human being above everything in the universe. He was the father of stoicism. (PIRES and POZZOLI, 2020)

Aristotle, in turn, says the human being is a social being and rational for nature, which means he was a defender of laws and nature in a superior way. The mental ideas appear in Creon and Antigone, where emerge as a doctrinarian elaboration of natural law. (PIRES AND POZZOLI 2020)

Cicero, the last one, it is told he is a character of stoic thought to comprehend and understand dignity in a large way of the equitable sense of dignity in all human beings. It's also told that was about his thoughts, Saint Thomas Aquinas, in the Middle age wrote of *dignitas humanas* the first time. (SARLET, 1998). The dignity is rational, as a result of a personal investment for letting lead by reason or faith. The recognition of well turns into action, on this account a life of failure is the lack of knowledge and discernment. (FREDES, 2014)

Hegel in a most recently history, in his studies about Philosophy of Law, tells the human being social capability of development, shared to a system which defines itself as Abstract Law, Morality and Ethic and in these structures are inserted the dignity and human autonomy that needs to be showed with reason and freedom to being understanding. (FREDES, 2014)

Manzone (2010) teaches the notion of social justice, as a main principle to the social institution is placed on concept the dignity is a social question, more than a

private one, driving to a genuine moral solicitation about organized models over which the public life is structured. For him, social justice notices the human laws has a social base and individual, expressing the protection of these rights just be assured by a development social process what means, the political ordering has a moral function to exercise in this process.

Although the dignity principle could be noted it's ancient, as a positive right is recently. Just right after the Second World War and Universal Declaration of Human Rights at 1948, the human dignity started being recognized in the Constitution of so many countries. (SARLET, 2011 – BOOK)

It's important to know before the Declaration, just two documents contained mention to human rights, what are United States Independence Declaration of 1776 and Declaration of Human and Citizen's Rights, France, 1789, but the focus as the human rights, not the dignity specially.

Explaining how dignity has been viewed today:

The dignity is an intangible value and an essential right of human person. In Saint Thomas Aquina saying (2004, p. 51) it is impossible meeting a definition to the concept of human person dignity, standing out the term dignity is something absolutely and belongs to essence. (ALVES, 2009, p. 31) (our translation)

In general, creeds had been given support along history to ideas of nature appropriation and unbalance between human being and non-human being. Christianity, for example, always had a real division between humans and all other creatures which lasts today, especially after Industry Revolution, when nature lost it sacre appearance toward man.(CHALFUN; GOMES, W.Y)

In Brazil, you could notice it when the country was a Colony from Portugal, where its territory had been explored: animals, forests, gold, ground, everything that could be explored, was explored. (CHALFUN; GOMES, W.Y).

III. ANIMALS IN THE LAW

In a legal aspect, the United Nations Educational, Scientific and Cultural Organization (UNESCO) prescribed in 1978 the recognizing to all living being the value of life, dignity respect and integrity:

The Universal Declaration of Animal Rights (DUDA), approved by UNESCO (1978) enshrines a bundle of rights for animals: the right to life and existence (Article 1); the right to be respected, not to be exterminated or exploited

(Article 2) and the right to physical integrity (Article 3), the right of pet animals to a life span according to their natural longevity and not to be abandoned (Article 6), being the death of an animal without need (of course not the slaughter of animals) biocide, not as a reflection of the human being's duties towards animals, but listing them as subjects of rights. (COSTA; FERREIRA, 2018, p. 28) (our translation)

In Brazilian Constitution of 1988, the article 225 forbids cruelty acts against animals, and also Law n. 9.605/98 defines environmental crimes. In the civil law, animals are been saw as property. Let's see what tells each rule, beginning for Brazilian Constitution:

Art. 225. Everyone has the right to an ecologically balanced environment, a good for common use by the people and essential to a healthy quality of life, imposing on the Public Power and the community the duty to defend and preserve it for those present and future generations.

§ 1 In order to ensure the effectiveness of this right, it is incumbent upon the Government:

I - preserve and restore essential ecological processes and provide ecological management of species and ecosystems; (Regulation)

[...]

IV - require, in accordance with the law, for the installation of a work or activity potentially causing significant degradation of the environment, a prior environmental impact study, which will be publicized; (Regulation)

[..]

VI - to promote environmental education at all levels of education and public awareness for the preservation of the environment;

VII - protect the fauna and flora, prohibiting, in accordance with the law, practices that endanger their ecological function, cause the extinction of species or submit animals to cruelty. (Regulation)

§ 2° Anyone who explores mineral resources is obliged to recover the degraded environment, in accordance with a technical solution required by the competent public agency, in accordance with the law.

§ 3 The conduct and activities considered harmful to the environment will subject the offenders, natural or legal persons, to criminal and administrative sanctions, regardless of the obligation to repair the damage caused.

[..]

§ 5° The vacant lands or lands collected by the States, for discriminatory actions, necessary for the protection of natural ecosystems, are unavailable.

[...]

§ 7 For the purposes of the final part of item VII of § 1 of this article, sports practices that use animals are not considered cruel, provided they are cultural manifestations, pursuant to § 1 of art. 215 of this Federal Constitution, registered as an immaterial asset that is part of the Brazilian cultural heritage, and must be regulated by a specific law that ensures the welfare of the animals involved. (our translation)

The following rules could be seen in 9.605/98

Law:

Crimes against Fauna

Art. 29. Killing, chasing, hunting, capturing, using specimens of wild fauna, native or on a migratory route, without the proper permission, license or authorization of the competent authority, or in disagreement with the obtained:

Penalty - imprisonment from six months to one year, and fine.

§ 1 Incurs the same penalties:

I - who prevents the procreation of fauna, without a license, authorization or in disagreement with the one obtained;

II - whoever modifies, damages or destroys a nest, shelter or natural breeding;

III - whoever sells, exposes for sale, exports or acquires, keeps, keeps in captivity or deposits, uses or transports eggs, larvae or specimens of wild fauna, native or on a migratory route, as well as products and objects originating therefrom, from breeding sites unauthorized or without proper permission, license or authorization from the competent authority.

§ 2 In the case of domestic guards of a wild species not considered threatened with extinction, the judge may, considering the circumstances, fail to apply the penalty.

§ 3° Specimens of wild fauna are all those belonging to native, migratory and any other species, aquatic or terrestrial, which have all or part of their life cycle occurring within the limits of Brazilian territory, or Brazilian jurisdictional waters.

§ 4 The penalty is increased by half, if the crime is committed:

I - against a rare or endangered species, even if only in the place of infringement;

II - during a period prohibited to hunting;

III - during the night;

IV - with abuse of license;

V - in a conservation unit;

VI - using methods or instruments capable of causing mass destruction.

§ 5 The penalty is increased up to three times, if the crime results from the exercise of professional hunting.

§ 6 The provisions of this article do not apply to fishing acts.

Art. 30. Exporting raw skins and hides of amphibians and reptiles abroad, without the authorization of the competent environmental authority:

Penalty - imprisonment, from one to three years, and fine.

Art. 31. To introduce an animal specimen into the country, without a favorable official technical opinion and a license issued by a competent authority:

Penalty - imprisonment, from three months to one year, and fine.

Art. 32. Practicing an act of abuse, ill-treatment, injuring or mutilating wild, domestic or domesticated animals, native or exotic:

Penalty - imprisonment, from three months to one year, and fine.

§ 1 The same penalties apply to those who carry out a painful or cruel experience on a live animal, even for didactic or scientific purposes, when there are alternative resources.

§ 1-A In the case of a dog or cat, the penalty for the conduct described in the caput of this article will be imprisonment, from 2 (two) to 5 (five) years, fine and prohibition of custody.

§ 2 The penalty is increased from one sixth to one third, if the animal is killed.

Art. 33. Cause, through the emission of effluents or the carrying of materials, the perishing of specimens of aquatic fauna existing in rivers, lakes, dams, lagoons, bays or Brazilian jurisdictional waters:

Penalty - imprisonment, from one to three years, or fine, or both cumulatively.

Single paragraph. Incurs the same penalties:

I - who causes degradation in public domain aquaculture nurseries, dams or stations;

II - anyone who explores natural fields of aquatic invertebrates and algae, without a license, permission or authorization from the competent authority;

III - whoever anchors vessels or throws debris of any nature on mollusc or coral banks, duly demarcated on a nautical chart.

Art. 34. Fishing during a period in which fishing is prohibited or in places prohibited by a competent body:

Penalty - imprisonment from one year to three years or a fine, or both cumulatively.

Single paragraph. Those who:

I - fish species that must be preserved or specimens with sizes smaller than those allowed;

II - fishes in quantities greater than those allowed, or through the use of devices, gear, techniques and methods that are not allowed;

III - transports, sells, benefits or industrializes specimens from prohibited collection, harvesting and fishing.

Art. 35. Fishing through the use of:

I - explosives or substances that, in contact with water, produce a similar effect;

II - toxic substances, or other means prohibited by the competent authority:

Penalty - imprisonment from one year to five years.

Art. 36. For the purposes of this Law, fishing is considered to be any act that tends to withdraw, extract, collect, catch, seize or capture specimens from groups of fish, crustaceans, molluscs and hydrobic vegetables, susceptible or not of economic use, except the endangered species, included in the official fauna and flora lists.

Art. 37. It is not a crime to slaughter an animal, when performed:

I - in a state of need, to satisfy the agent's or his family's hunger;

II - to protect crops, orchards and herds from the predatory or destructive action of animals,

provided that it is legally and expressly authorized by the competent authority;

III - (VETOED)

IV - because the animal is harmful, as long as it is characterized as such by the competent body.(our translation)

Oki and Pandeff (2016) discourse of the incongruity between article 29 § 1º, III, animals trade, penalty from six months to a year; and article 30, exporting skins and leathers of amphibians and reptiles abroad, penalty of three years confinement. The legislator put most several penalty to exporting of leather and skin than trade of own animal, giving animals less importance than an object made from it, demonstrating the missing of ethical and value analysis.

In Civil Law are still saw as objects, property:

Art. 936. The owner, or holder, of the animal will reimburse the damage caused by it, if it does not prove the victim's guilt or force majeure.

Art. 1,397. The offspring of the animals belong to the usufructuary, deducted how many are enough to fill the existing heads of cattle when the usufruct begins.

Article 1,445. The debtor may not dispose of the pledged animals without the creditor's prior written consent

Article 1,447. Machines, appliances, materials, instruments, installed and in operation, with or without accessories, may be pledged; animals, used in industry; salt and goods intended for the exploitation of salt pans; swine products, animals for the industrialization of meat and meat products; raw materials and industrialized products.

Single paragraph. It is regulated by the provisions relating to general warehouses the pledge of goods deposited in them.(our translation)

Then, it's clear that Brazilian rules needs to get better as measure other countries are already doing the same, for example, considering animals a higher status than things: France, has changed their Civil Law 2015-177 at article 515, including the animal as sensible; Germany Law prescribes only corporeal objects are stuff, not animals which are protected by special rules. Portugal, in turn, claims specific behaviors against company animals are crimes. (COSTA; FERREIRA, 2018).

IV. ANIMALS AS SUBJECTS OF RIGHTS

Philosophers around the world have already criticized the relationship between humans and animals, giving just

to human beings the concept of being capability, despising non-humans which are considered instruments to human welfare. Pythagoras, Plutarch, Porphyry, Jeremy Bentham, Nietzsche, Tom Regan and Peter Singer and even Heidegger are some names who disagree with that in a different degree. (STRECK, 2013)

A really important philosopher who got started the studies about animals, Arthur Schopenhauer, in his book *The World as Will and Representation* in which had considered the Christian morality limited and obtuse by look on just human being. Nevertheless, the morality that is just convenient for the man it is not morality, because the real and pure genuineness morality doesn't look just at itself and its own specie. (ARIOCH, 2018)

Thinking In Based on Morality, Schopenhauer tends to emphasize a non-anthropocentric ethical approach, the beginning of an animal ethic. An investigation of good deed sense to conclude it is the deed of a disinterested person who doesn't look for own desires, not even aim to rewards for each deed, free from selfishness and vain pretensions. (BARBOSA, 2012)

In an International Vegetarian Congress occurred at 1957, it is told that Schopenhauer assigned that:

the unpardonable oblivion of non-human animals are relegated by European moralists were well known. They pretend animals doesn't have any rights. They believe and make the others believe the human behavior to animals has nothing to do with moral, the human being has nothing duties to animals. (ARIOCH, 2018, p. 4-5)(our translation)

Rousseau, in that time, also has already told in his book, *Discourse of Inequality*:

It appears, in fact, that if I am bound to do no injury to my fellow-creatures, this is less because they are rational than because they are sentient beings: and this quality, being common both to men and beasts, ought to entitle the latter at least to the privilege of not being wantonly ill-treated by the former (ROUSSEAU, 1754, n.p). (our translation)

The sentient is considered a prerequisite to be a subject of interests. In this way, if the interest is put in a sense of subjective right, the protection would be made for all the beings' sentient, including animals. (ANDRADE, ZANBAM, 2016)

In the XVIII century, Jeremy Bentham, known as an of utilitarianism modern creator urges how an animal is a creature that also feels the pain so deeply as a human being, despite their rationality and, this is the measure:

The day may come when the non-human part of the animal creation will acquire the rights that never

could have been withheld from them except by the hand of tyranny.

The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the whims of a tormentor. Perhaps it will someday be recognized that the number of legs, the hairiness of the skin, or the possession of a tail, are equally insufficient reasons for abandoning to the same fate a creature that can feel? What else could be used to draw the line? Is it the faculty of reason or the possession of language? But a full-grown horse or dog is incomparably more rational and conversable than an infant of a day, or a week, or even a month old. Even if that were not so, what difference would that make? The question is not can they reason? Or can they talk? But can they suffer? (BENTHAM, 1823, p. 143-144) (our translation)

According to Chalfun and Gomes (w.y), nowadays, everything tends to sense to consider them subjects of rights, as their rights are being insured by the *parquet* in so many civil public processes, and also, a lot of rules protecting them, not just a little part of environment. This insurance by the Brazilian law is increasing last years and are involving non-human lives, being a new root to be studied.

Most recently at philosophical scene, Gary L. Francione applies the Abolitionist Approach, presenting the schizophrenia moral theory that assumes forwards back to slavery human abolition since humanitarian treatment. To Francione, in spite of the recognizing by the humans that those non-humans have some moral value, these interests could be totally ignored: this is the idea of schizophrenia, when ethical treatment to those non-humans presents itself connected to speciesism notion. (CARDOSO; NUNES; TRINDADE, 2015)

In turn, Robert Garner mention that property condition of animals is not an obstacle to gradual banishment of exploratory, because animals does not have interest in not being treated like mobile stuff. Nevertheless, the non-humans are unable of having an individual autonomy individual what justify the prohibition for being used by humans, or, animals do not care about being used for human goals provided that don't suffer. To conclude, what he intends, is to implement a political about creating and institutionalized management of non-humans (CARDOSO; NUNES; TRINDADE, 2015).

In words from Conceição, Tonella and Tonella (2016), visible or not, animals, despite the fact they are not able to litigate in justice, the prosecutor represents them, so, they are subjects of rights and not private goods or diffuse at

men's hand. Having a worth life is not just a human right, but all being lives as carrier of a minimum existential conscious.

Streck (2013) mentions, for example, the Ecuador Constitution of 2008 evokes, in a brand-new preview, Nature Rights, beyond human species rules, the nature as subject, despite the fact Nature rights are not the same thing than animals' rights. Also, Bolivia Constitution walks on this way, changing paradigms.

Nowadays the rules are moving on to better, ensuring each more the animal right, including them, for example, at the discussions of keeping by the owners when is talked of separation, shared behavior and increasing the penalty for mistreatment. Most recently, a pet rabbit was assured to flight with his owner in a domestic flight where just allowed cats and dogs (O GLOBO, 2021) and even a horse is been represented by a lawyer against mistreatment to ancient owners (GAZETA DO POVO, 2021).

About the decision of the rabbit, the judge mentioned that demands to live animals were accomplished. Despite the fact the animal was not a dog or even a cat, this does not take off the domestic pet condition of it.

V. CONCLUSION

Right after all presented, it's possible to conclude animals, instead ancient thoughts, are more than objects, are subjects, which science day by day tends to show they've feelings and pain.

Saint Thomas Aquinas wrote of *dignitas humanas* the first time in the Middle Age, but human dignity is a recent right guaranteed by the law, mainly after Second World War, with Universal Declaration of Human Rights.

The dignity is rational, as a result of a personal investment for letting lead by reason or faith in words of Sarlet. But it's needed change way it's thought about dignity. It transposes human being and set other elements like nature and animals.

The UNESCO prescribed in 1978 the recognizing to all living being the value of life, dignity respect and integrity; Brazilian Constitution of 1988 asserts the article 225 forbids cruelty acts against animals, and also Law n. 9.605/98 defines environmental crimes. In civil rights, animals are been saw as property.

Philosophers around the world over time say animals have the right to be respected, they are sensitive and needed to be assured of their rights.

As mentioned before, despite the fact they are not able to litigate in justice, the prosecutor might represent them, so, they are subjects of rights and Brazilian Law is

improving itself in a way that now, it's already argued, for example, about shared guard and increasing the penalty for mistreatment, standing out they need to be protected from human hands.

A conclusion section must be included and should indicate clearly the advantages, limitations, and possible applications of the paper. Although a conclusion may review the main points of the paper, do not replicate the abstract as the conclusion. A conclusion might elaborate on the importance of the work or suggest applications and extensions.

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